

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
SEPTEMBER 7, 2006**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on September 7, 2006, beginning at 10:40 a.m. The meeting was tape-recorded and the tape(s) are on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Douglas A. Fox and Commissioner Mike Joyner were present at the meeting. Commissioner John Lyon was not present.

MINUTES OF AUGUST 10, 2006 MEETING

Chairman Fox made a motion to waive the reading of the minutes from the August 10, 2006, meeting into the record. Seconded by Commissioner Joyner. So Ordered. Chairman Fox made a motion to approve the minutes from the August 10, 2006, meeting. Seconded by Commissioner Joyner. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, Chairman Fox asked Commissioner Joyner if there were any conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Joyner stated that he found no conflicts of interest. Chairman Fox stated that he had to recuse himself from hearing case# 33, Wilmington Ale House, and it would be carried over to the next Commission meeting.

I. HEARING CASES – 64 Listed

Chief Counsel Fred Gregory stated that Mr. Bart White, attorney for hearing case #58, Han Dee Hugos 21, was present to speak on behalf of his client. Mr. White introduced Haddon Clark on behalf of the Sampson Bladen Oil Company, Inc. and Ernie Hand, Director of Employee Development. Mr. White stated the Offer in Compromise involved an incident in January 2006 and was ten days short of being regarded as a first offense.

Mr. Hand summarized the training for the store employees. Mr. Hand stated they have one to two training sessions conducted by Alcohol Law Enforcement, which are held in Wilmington, Elizabeth City, Raleigh and the Outer Banks area. Mr. Hand stated that Jane Humble with the Education Division at the ABC Commission would be involved in their training during the latter part of this year.

Chairman Fox asked Mr. Hand how many stores did they have. Mr. Hand replied 72 stores.

Chairman Fox made a motion to accept the Offer in Compromise with further stipulation that employees attend the RASP classes, which are scheduled with Jane Humble. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated that Mr. Lex Larson, owner of Symposium Café, 1st offense case #13, was present to speak on behalf of his business. Mr. Larson stated the Symposium Café had been opened a little over a year in downtown Durham. Mr. Larson stated he was not aware of this violation until the ruling, which was made by the Commission at the July meeting. Mr. Larson stated his manager did not tell him about it and the

manager did quit. Mr. Larson asked for a reduction in the fine. Mr. Larson stated the employee who committed the violation continues to work with him and the employee thought the person was over 21. Mr. Larson stated he was very confident they would not have another problem.

Chairman Fox made a motion to reduce the penalty to \$500.00 with further stipulation that all employees attend a RASP class within the next 45 days. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated that Mr. Jeff Hollers, attorney for hearing case #59, Fayetteville's Coaches Sports Grill, was present to speak on behalf of his client. Mr. Hollers stated that an agent observed an individual being helped by some of his friends in the parking lot of the sports grill. Mr. Hollers stated the individual ordered a beer and was served one. Mr. Hollers stated that the individual was not in the bar long enough for anyone to observe him. Mr. Hollers stated that after the first beer the individual remained in the bar but was not served any additional alcohol.

Chairman Fox stated that in the report the agent went up to the bartender and pointed out the customer's intoxication to the server.

Chairman Fox asked Mr. Sierra, the general manager, if the bartender was still employed with him. Mr. Sierra stated she was. Chairman Fox asked Mr. Sierra if she had attended a class. Mr. Sierra said she immediately attended a class upon this incident. Mr. Sierra stated he did not see the individual stumbling when he watched him play pool.

Chairman Fox made a motion to reduce the penalty to \$500.00 with further stipulation that all employees attend a RASP class within the next 45 days. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated that Mr. David McDaniel, owner of hearing case #2, Spirits, was present to speak on behalf of his business. Mr. McDaniel stated that he had three violations and two were violations concerning the video poker machines. Mr. McDaniel stated that they did not pay out on the machines. Mr. McDaniel stated that the violation could not happen again because the machines are no longer in the establishment. Mr. McDaniel stated they are a small business and asked that the fines be reduced.

Chairman Fox asked Mr. McDaniel what percentage of the money in the video poker machine he kept. Mr. McDaniel said he received 60% and Fun Time received 40%. Mr. McDaniel replied the only thing paid out was tee-shirts.

Chairman Fox made a motion to reduce the penalty to \$2,000.00 with further stipulation that all employees attend a RASP class within the next 45 days. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated that Mr. Glenn Lassiter, attorney for hearing case #3, Smokers Express 3479, was present to speak on behalf of his client. Mr. Lassiter stated the violation occurred on September 15, 2005, when the employee allegedly sold beer to an underage person. Mr. Lassiter asked for consideration with the penalty in the matter. Mr. Lassiter stated Pantry takes extensive steps to train employees, and he went over the training for the employees.

Mr. Lassiter stated the employee requested an I.D. from the underage person, reviewed it, and proceeded to make the sale. Mr. Lassiter said the employee asked the underage person if he were old enough and he replied he was.

Mr. Lassiter asked for consideration with regard to the active suspension with additional ABC training and/or monetary penalty.

Chairman Fox made a motion to increase the penalty to \$4,000.00, with no active time, upon the stipulation that all employees attend a RASP class within the next 45 days. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated that Mr. Gordon Buntic, owner of Splashh, hearing case #36, which was on the August Agenda, was present to speak on behalf of his business. Mr. Buntic stated they had two violations last year in July and August. Mr. Buntic stated the only reason he was at the Commission meeting was he had paid the penalty but was concerned with the seven day active suspension. Mr. Buntic stated they were closed three days and had taken two classes with ALE after the incident occurred.

Chairman Fox made a motion to remove the seven-day active suspension with further stipulation that all employees attend a RASP class within the next 45 days. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated that Assistant Counsel Renee Cowick received a letter from Mr. Richard A. Wolfe, regarding hearing case #1, Winery at the Blueberry Farm.

Chairman Fox made a motion to waive the \$600.00 penalty with further stipulation that all employees attend a RASP class within the next 45 days. Seconded by Commissioner Joyner. So Ordered.

Chairman Fox made a motion to approve the remaining Offers in Compromise with the exception of hearing case #58, Han Dee Hugos 21, hearing case #59, Fayetteville's Coaches Sports Grill, hearing case #2, Spirits, hearing case #1, Winery at the Blueberry Farm and hearing case #36, Splashh, from the August Agenda. Seconded by Commissioner Joyner. So Ordered.

II. FIRST OFFENSE CASES – 24 Listed

The following is a list of first offense violation cases in which Final Agency Decisions were signed by the Chairman on September 7, 2006, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. Wilco 1871 – 1102 Kingold Boulevard, Snow Hill, NC 28580
2. Tienda Mexicana La Surena – 19816 South Main Street, Cornelius, NC 28031
3. King Bee II – 1810-A North Main Street, Roxboro, NC 27573
4. Fields Tavern – 2140 North Main Street – Suite 5, High Point, NC 27262
5. Crossroads Sports Bar and Grill – 700 Roberts Avenue, Lumberton, NC 28358
6. A and W Grocery and Grill – 102 East Tally Ho Road, Stem, NC 27581
7. Sheetz – 1655 North Main Street – Fuquay Varina, NC 27526
8. Market Express 350 – 7802 Idlewild Road, Indian Trail, NC 28079
9. Greg's Country Store – 3328-B West Hornes Church Road, Bailey, NC 27807
10. Eckerd Drugs 3316 – 6798 Shallowford Road, Lewisville, NC 27023
11. Circus Food Stores – 525 Elmira Street, Burlington, NC 27217
12. Cash and Carry – 1710 South 109 Camden Road, Wadesboro, NC 28170
13. Symposium Café – 318 Blackwell Street, Durham, NC 27701
14. Shelton Vineyards – 286 Cabernet Lane, Dobson, NC 27017
15. Spartacus Restaurant – 4139 Chapel Hill Road, Durham, NC 27707
16. Food Mart 16 – 4319 Hwy 55, Durham, NC 27713
17. J Co – 939 US Hwy 52 South, Wadesboro, NC 28170
18. Farm House Food Mart – 101 Dickens Road, Fuquay Varina, NC 27526
19. Coco Osteria – 214 North Tryon Street Plaza – Suite 3, Charlotte, NC 28202

20. B P 28 – 7220 Six Forks Road, Raleigh, NC 27517
21. M and M Mini Mart – 804 South Mebane Street, Burlington, NC 27215
22. Eckerd Drugs 3092 – 3534 Mt Holly Huntersville Road, Charlotte, NC 28216
23. Fast Track 141 – 3009 North Hwy 16, Millers Creek, NC 28651
24. Scuppernong Quik Stop – 403 Scuppernong Drive, Columbia, NC 27935

Chairman Fox made a motion to approve the Offers in Compromise for the First Offense cases with the exception of 1st Offense case #13 Symposium Café, which had been earlier ratified. Seconded by Commissioner Joyner. So Ordered.

III. ABC STORE LOCATION – PITT COUNTY ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC store in Pitt County. On June 27, 2006, the Commission received a letter from Paul Banta, General Manager of the Pitt County ABC Board, requesting approval to purchase property for construction of a new ABC store in the town of Winterville. On July 11, 2006, ALE Agent Matt Knight began an investigation and found that the proposed location for this ABC store is 2082 Central Park Drive, Winterville, North Carolina.

The property is currently vacant and surrounded by commercial businesses. The property is being purchased from Alex Speight and Ken Whichard.

The property is zoned General Business and the site poses no problems for an ABC store. The issue of an ABC store in Winterville has received approval by the town council. The board asked the town council if they could increase the height of the proposed sign. The town council approved a height of 50 feet.

No financial interest or conflict of interest exist between the Pitt County ABC Board and the property owners.

The Pitt County ABC Board plans to build a 5,000 square foot building. The Pitt County ABC officers will also occupy offices in the building.

The nearest church is Reedy Branch Baptist Church and is approximately .4 of a mile from the proposed location.

The nearest school is Creekside Elementary School and is 1.1 miles from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on January 7, 2006, but the sign was not in compliance with regulations because it was too far back in the field. The sign was moved forward and now meets the requirements with the ABC Commission's 30-day requirement.

The Commission has received no objections to this site. Mr. Herring recommended that the ABC Commission approve this location.

Chairman Fox made a motion to approve the store location. Seconded by Commissioner Joyner. So Ordered.

IV. ABC STORE LOCATION – TRIAD MUNICIPAL ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC store in Davie County. On August 3, 2006, the Commission received a letter from Jim Waddell, President of the Triad Municipal ABC Board, requesting approval to locate an ABC store in the Bermuda Run area. On

August 4, 2006, ALE Supervisor Mark Senter began an investigation and found that the ABC Board proposes a new store at 5287 US Highway 158, Advance, North Carolina.

The proposed site is a strip mall business area. The ABC store location formerly housed a CVS Pharmacy.

This property is zoned Commercial Mixed Use and alcohol sales are permitted there.

The property will be leased by the Board from Revco Discount Drug Centers, Inc. They will lease 6,000 square feet. The lease is a six-year lease with the first year's rent being \$59,150.00 and in the sixth year it will be \$68,571.00.

The nearest school is Pinebrook Elementary School and is located 5.8 miles from the proposed location.

The nearest church is Summit 121 and is located .2 miles from the proposed location. There are five other churches in this area within 1.5 miles of the location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on June 19, 2006, in compliance with the ABC Commission's 30-day requirement.

There are no conflicts of interest between the sublessor of Revco Discount Drug Centers, Inc. and the Triad Municipal ABC Board.

The Commission has received no objections to this site. Mr. Herring recommended that the ABC Commission approve this location.

Commissioner Joyner made a motion to approve the store location. Seconded by Chairman Fox. So Ordered.

V. ABC STORE LOCATION – WAKE COUNTY ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC store in Wake County. On July 20, 2006, Craig Pleasants, General Manager of the Wake County ABC Board, requested approval to purchase property for a new store in Raleigh. On August 1, 2006, ALE Agent Bill Berryhill began an investigation and found that the proposed store will be located on Lot 3 of the North Beltline Center in Raleigh and the property is behind Perkins Restaurant, 2657 Appliance Court adjacent to Econo Lodge.

The property is currently owned by Cary Academy. The property address is 2645 Appliance Court, Raleigh, North Carolina.

This store will replace an existing store at 4 Fenton Street, Raleigh, North Carolina. The sale of the property is contingent upon the Commission's approval. The purchase price is \$350,000.00 for the property. Upon the Commission's approval, the board plans to construct a brick modern retail store with approximately 4,200 square feet.

Agent Berryhill was unable to locate a church within a two-mile radius of the proposed location.

The nearest school is the Brentwood Elementary School and is located 1.8 miles from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on July 20, 2006, in compliance with the ABC Commission's 30-day requirement.

There are no conflicts of interest between the Wake County ABC Board and the property owners.

The Commission has received no objections to this site. Mr. Herring recommended that the ABC Commission approve this location.

Chairman Fox made a motion to approve the store location. Seconded by Commissioner Joyner. So Ordered.

VI. OTHER BUSINESS –

Administrator Michael Herring introduced the following new ABC Commission employees:

Yadira Soto – Audit Division
Eleanor Johnson – Education Division

With no further business, the meeting adjourned.

Douglas A. Fox, Chairman
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Dottie L. Taylor, Legal Division